exaggerated restenosis in a diabetic subject by administering an inhibitor of receptor for advanced glycation endproduct (RAGE) to said subject, wherein said inhibitor is a polypeptide, classifiable in classes 514 and 530, subclasses 2 and 350, respectively.

II. Claims 1-5, 7, 11-16, drawn to a method for inhibiting new tissue growth or neointimal formation in blood vessels in a subject, or for preventing exaggerated restenosis in a diabetic subject by administering an inhibitor of receptor for advances glycation endproduct (RAGE) to said subject, wherein said inhibitor is an organic or inorganic molecule, classified in class 514, subclass 1;

III. Claims 1-5, 7, and 11-16, drawn to a method for inhibiting new tissue growth or neointimal formation in blood vessels in a subject, or for preventing exaggerated restenosis in a diabetic subject by administering an inhibitor of receptor for advances glycation endproduct (RAGE) to said subject, wherein said inhibitor is a nucleic acid, classifiable in class 514 and 536, subclass 44 and 23.1, respectively;

IV. Claims 1-6 and 10-16, drawn to a method for inhibiting new tissue growth or neointimal formation in blood vessels in a subject, or for preventing exaggerated restenosis in a diabetic subject by administering an

inhibitor of receptor for advances glycation endproduct (RAGE) to said subject, wherein said inhibitor is an antibody, classified in class 424, subclass 130.1;

V. Claims 17, 18 and 22-24, drawn to a method for determining whether compound inhibits new tissue growth in a blood vessel is a subject by administering the compound to a non-human animal and comparing new tissue growth or neointimal formation in a injured blood vessels in the animal with or without the administration of said compound, wherein the compound is an organic or inorganic molecule, classified in class 435, subclass 4;

VI. Claims 17, 19, 20, and 22-24, drawn to a method for determining whether a compound inhibits new tissue growth in a blood vessel in a subject by administering the compound to a non-human animal and comparing new tissue growth or neointimal formation in an injured blood vessels in the animal with or without the administration of said compound, wherein the compound is a polypeptide, classified in class 435, subclass 7.2;

VII. Claims 17, 19, and 22-24, drawn to a method for determining whether a compound inhibits new tissue growth in a blood vessel in a subject by administering the compound to a non-human animal and comparing new

tissue growth or neointimal formation in an injured blood vessels in the animal with or without the administration of said compound, wherein the compound is a nucleic acid, classified in class 435, subclass 6;

VIII. Claims 17, and 21-24, drawn to a method for determining whether a compound inhibits new tissue growth in a blood vessel in a subject by administering the compound to a non-human animal and comparing new tissue growth or neointimal formation in an injured blood vessels in the animal with or without the administration of said compound, wherein he compound is an antibody, classified in class 345, subclass 7.1.

The Examiner stated that claims 1-5 and 11-16 link(s) inventions I-IV. The Examiner stated that claim 6 links inventions I and IV. The Examiner stated that claim 8 links inventions I and III. The Examiner stated that claims 17 and 22-24 link inventions V-VIII. The Examiner stated that claim 19 links inventions VI and VII. The Examiner stated that the restriction requirement between the linked inventions is subject to the nonallowance of the linking claim(s), claim 1-6, 8, 11-17, 19 and 22-24. The Examiner stated that upon the allowance of the linking claim(s), the restriction requirement as to the linked inventions shall be withdrawn and any claim(s) depending from or otherwise including all the limitations of the allowable linking claim(s) will be entitled to examination in the instant application. The Examiner stated that applicant(s) are advised that if any such claim(s)

depending from or including all the limitations of the allowable linking claims(s) is/are presented in a continuation or divisional application, the claims of the continuation or divisional application may be subject to provisional statutory and/or nonstatutory double patenting rejections over the claims of the instant application. The Examiner stated that where a restriction requirement in withdrawn, the provisions of 35 U.S.C. 121 are no longer applicable. See In re Zeigler, 44 F.2d 1211, 1215, 170 USPQ 129, 131-32 (CCPA 1971). See also M.E.P..§804.01.

The Examiner alleged that the inventions are distinct, each from the other because of the following reasons: The Examiner alleged that inventions I-IV are distinct from the other because they are drawn to methods of using different materials having different chemical structures, different physical properties, and different biological functions: polypeptides, organic or inorganic molecules, nucleic acids and antibodies. Further, the Examiner alleged that they are drawn to methods that differ at least in method steps, reagents and/or dosages used, schedules used, responsive variables, and criteria for success. The Examiner alleged that the differences between Inventions I-IV are further underscored by their different classifications and independent search status. Thus, the Examiner alleged that they are patentably distinct from each other. Similarly, the Examiner alleged that inventions V-VIII are distinct from each other because of the reasons as set forth above.

The Examiner alleged that inventions I-IV and inventions V-VIII are unrelated. The Examiner stated that inventions are unrelated

if it can be shown that they are not disclosed as capable of use together, or they have different modes of operation, or they have different functions, or they have different effects. The Examiner alleged that in the instant case the different inventions have different modes of operation and have different functions. The Examiner alleged that a method of inhibiting new tissue growth or neointimal formation or preventing exaggerated restenosis in a subject is different from a method for determining whether a compound inhibits new tissue growth in a blood vessel in a subject, and they differ at least in their objectives, method steps, reagents and/or dosages used, schedules, response variables, and criteria for success. The Examiner alleged that the differences between inventions I-IV and inventions V-VIII are further underscored by their different classifications and independent search status. Thus, the Examiner alleged they are patentably distinct from each other. The Examiner alleged that because these inventions are distinct for the reasons given above and have acquired a separate status in the art because of their recognized divergent subject matter and as shown by their different classification, restriction for examination purposes as indicated is proper.

The Examiner stated that the applicant is advised that the reply to this requirement to be complete must include an election of the invention to be examined even though the requirement be traversed (37 C.F.R. §1.143). The Examiner stated that applicant is reminded that upon cancellation of claims to a non-elected invention, the inventorship must be amended in compliance with 37 C.F.R. §1.48(b) if one or more of the currently named

inventors is no longer an inventor of at least one claim remaining in the application. The Examiner stated that any amendment of inventorship must be accompanied by a petition under 37 C.F.R. §1.48(b) and by the fee required under 37 C.F.R. §1.17(I).

In response to this restriction requirement, applicants undersigned attorney, on behalf of applicant, hereby elects, with traverse, to prosecute the invention of Examiner's Group I, i.e. claims 1-6, 8, 9 and 11-16, allegedly drawn to a method for inhibiting new tissue growth or neointimal formation in blood vessels in a subject, or for preventing exaggerated restenosis in a diabetic subject by administering an inhibitor of receptor for advanced glycation endproduct (RAGE) to said subject, wherein said inhibitor is a polypeptide.

Applicant notes that 35 U.S.C. §121 states, in part, that "[i]f two or more independent and distinct inventions are claimed in one application, the Commissioner may require the application to be restricted to one of the inventions." [Emphasis added]. Applicant requests that the restriction of Examiner's Group I from Examiner's Groups II-VIII be withdrawn in view of the fact that the claims of Examiner's Group I are not independent of Examiner's Groups II-VIII. Applicant maintains that the claims of Examiner's Group I and Examiner's Groups II-VIII do not define patentably distinct inventions.

Under M.P.E.P. §802.1, "independent" means "there is no disclosed relationship between the subjects disclosed, that is, they are

unconnected in design, operation, and effect." The claims of Examiner's Group I, allegedly drawn to a method for inhibiting new tissue growth or neointimal formation in blood vessels in a subject, or for preventing exagerated restenosis in a diabetic subject by administering an inhibitor of receptor for advanced glycation endproduct (RAGE) to said subject, wherein said inhibitor is a polypeptide, is related to the claims of Examiner's Groups II-VIII in that the claims in all groups are directly related to inhibition of new tissue growth or neointimal formation in blood vessels as part of their overall design, operation, and effect.

The claims of Examiner's Group I, allegedly drawn to a method for inhibiting new tissue growth or neointimal formation in blood vessels in a subject, or for preventing exagerated restenosis in a diabetic subject by administering an inhibitor of receptor for advanced glycation endproduct (RAGE) to said subject, wherein said inhibitor is a polypeptide is related to the claims of Examiner's Groups II-VIII, all of which are allegedly drawn to methods for inhibiting new tissue growth or neointimal formation in blood vessels in a subject. Therefore, applicants maintain that all identified claims of Groups I-VIII rely on such inhibition of new tissue growth or neointimal formation in blood vessels in a subject as part of their overall design, operation, and effect. The specification recites that "this invention provides for a method for **inhibiting new tissue growth in blood vessels** in a subject" [emphasis added]. See page 3, lines 3-4. Further, the specification recites that "the invention also provides for a method of **inhibiting neointimal formation in blood**

vessels in a subject" [emphasis added]. See page 3, lines 11-12. Further, the specification recites that "as used herein, 'neointimal formation' encompasses new tissue growth in a blood vessel." See page 10, lines 7-8. In addition, the specification recites that "the invention also provides a method for **preventing exaggerated restenosis** in a diabetic subject" [emphasis added]. See page 3, lines 19-20. Therefore, all identified claims of Groups I-VIII rely on such inhibition of new tissue growth or neointimal formation in blood vessels in a subject as part of their overall design, operation, and effect. Accordingly, applicants request that the Examiner examine Groups I-VIII on the merits.

Applicant therefore respectfully asserts that two or more independent and distinct inventions have not been claimed in the subject application because the groups are not independent under M.P.E.P. §802.01. Therefore, restriction is improper under 35 U.S.C. §121.

Additionally, applicant points out that under M.P.E.P. §803, the Examiner must examine the application on the merits, even though it includes claims to distinct inventions, if the search and examination of an application can be made without serious burden. There are two criteria for a proper requirement for restriction, namely (1) the invention must be independent and distinct; AND (2) there must be a serious burden on the Examiner if restriction is not required.

Applicant maintains that there would not be a serious burden on